

EPA Response to American Forest and Paper Association Comments Regarding the Washington Rule
Briefing for OW Senior Management on Sept 25, 2017 09/27/17

Purpose: To provide an overview of EPA's responses to AFPA assertions related to the Washington Rule

Background

- On November 15, 2016, EPA partially approved and partially disapproved WA's HHC and approved WA's revised implementation tools. At the same time, EPA issued a final federal rule that revised a majority of HHC for WA. EPA's final HHC for WA took effect on December 28, 2016.
- On February 21, 2017, several industry groups, including the American Forest & Paper Association (AFPA), filed a petition requesting that EPA reconsider its action on WA's HHC and repeal or withdraw the federal rule. AFPA raised the same issues in person at EPA on August 24, 2017.
- Within five months of EPA receiving the industry petition, Earthjustice (on behalf of Waterkeepers Washington), Northwest Indian Fisheries Commission, and the Jamestown S'Klallam Tribe sent EPA letters requesting that EPA deny the petition.

Executive Summary of Response to AFPA Comments

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AFPA Comments and EPA Response

1. Cancer Risk Level and Tribal Treaty Rights

AFPA:

- Treaties and the CWA do not require EPA to treat tribes as the target population.
- EPA is changing its longstanding position of accepting CRLs of 10^{-5} to 10^{-6} as a risk management decision left to state discretion, as long as sensitive subpopulations are protected at 10^{-4} .
- National criteria are already based on conservative assumptions, and this is exacerbated by setting a 10^{-6} CRL for high consuming subpopulations (i.e., compounded conservatism, see Appendix 1).

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2. Costs and Permitting

AFPA:

- EPA's stringent criteria will impact compliance costs (particularly for PCBs) and lead to delays in permit issuance.
- EPA's overall compliance estimates are too low. Higher compliance costs are estimated in a 2013 cost study in WA (the 'HDR study').
- No pulp and paper mill NPDES permits have been issued in OR because of the difficulty of meeting the more stringent OR HHC (also based on an FCR of 175g/day) that EPA approved in 2011. This is described in a study commissioned by ODEQ (the Walker report)¹.

EPA's Response:

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¹ Recommendations and Implementation Plan (Nov 2016) http://www.oregon.gov/deg/FilterDocs/wap_FinalReport.pdf

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² Graph: Oregon NPDES Permitting Delays from DEQ's Permitting Program Review webpage
<http://www.oregon.gov/deq/FilterDocs/wgp-NPDESdelayschart.pdf>

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Appendix 1

An [article](#)³ written by Jerry Schwartz (Senior Director, AFPA) was published in BNA Bloomberg explaining the group's position on EPA's Human Health Criteria.

EPA Response to BNA Insights Article on EPA Human Health Criteria by Jerry Schwartz.

"Compounded Conservatism"

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³ <http://www.afandpa.org/media/blog/blogs/2016/05/18/though-well-intentioned-epa-s-approach-to-setting-human-health-water-quality-criteria-is-bad-public-policy>

⁴ Heavy molecular weight organic compounds (such as PAHs), metals, and complex compounds with high boiling points are not estimated to be reliably reduced by cooking; certain heavily chlorinated compounds could produce degradation products when heated that are as toxic as the parent; lighter organic compounds that are lipophilic and/or volatile may be reduced by cooking (e.g., if fat is allowed to drip away). However, contaminants would not be reduced in certain preparations (e.g. stews and soups). Finally, fish tissue concentrations of mercury, which binds directly to protein, would be increased by cooking techniques that reduce the moisture and fat content of fish.

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Benefits and Costs

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⁵ EPA includes inland and nearshore species in the default national fish consumption rate (e.g., 82 percent of shrimp, the most commonly consumed fish/shellfish in the U.S., were considered to be from nearshore waters and included in EPA's FCR). Also, high fish consumers may eat more locally caught fish as they may be recreational or subsistence fishers.

⁶ The author states in the opening section of the paper: "Everyone agrees even one additional cancer is too many, and society should do all it reasonably can to minimize cancer risks."

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Other Points

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